IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

P. I. L. NO.101 OF 2003

Shri Sanjay Narayan Pange. ...Petitioner.
Vs.
The Mira Bhayandar Municipal Corpn.& Ors. ...Respondents.
....
Mr. G.S. Godbole with Mr.H. S. Venegaonkar for the Petitioner.
Mr.R. S. Apte for Respondent No.1.
Mr.P. I. Khemani, AGP for Respondent Nos.3 and 4.
Mr. K.S. Dewal for Respondent No.7.
.....
CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

October 20, 2004.

P.C.:

The Court has been moved in these proceedings under Article 226 of the Constitution by a Municipal Corporator of the Mira Bhayandar Municipal Corporation. The Petitioner seeks to challenge the award of a Public Works Contract to the Seventh Respondent under a Work Order dated 29th June 2002.

2. The petition before the Court has been instituted on 17th September 2003. The delay on the part of the Petitioner in moving the Court has not been satisfactorily explained. In the affidavit in reply that was filed on behalf of the Municipal Corporation, on 29th June 2004, it has been stated that as on the date of the filing of the affidavit, almost 85% of the work had been completed and the

remaining work was on the verge of completion. In the reply, it has been alleged that the Petitioner was a Corporator during the relevant period, that he was aware of the tender and that he had not raised any objection or issue in the House when the matter was placed for consideration. According to the Municipal Corporation, the issue “appears to be raised to serve the malafide vested interest of the Petitioner”. Counsel for the Municipal Corporation states that almost the entire work has now been completed. The petition, in our view, is liable to be dismissed on the ground of latches alone.

3. In so far as the merits of the matter are concerned, sanction was granted to a project for the proposed widening and resurfacing of the existing road and the roadside nalla, with RCC slab for footpath, from the flyover road junction to National Highway No.8 in the area of the Municipal Corporation. The Maharashtra Jeevan Pradhikaran (MJP) had initially granted approval to the project at an estimated cost of Rs. 27.48 crores in which the work portion was stated to be Rs. 25.91 crores. The General Technical Guidelines had been furnished by the Veer Jijamata Technical Institute (VJTI). Tenders were invited. The estimated cost of work was revised at Rs. 32.03 crores of which the work portion was Rs.

30.20 crores. In the affidavit in reply, it has been stated that VJTI had on 6th October 2001 recommended the use of ready mix concrete instead of cast in situ concrete. In the tender notice, though ready mix concrete had been mentioned, estimates were not revised at the time of inviting bids. Moreover, it has been stated that whereas the Municipal Accounts Code provides for a defect liability period of six months, the tender notice stipulated a defect liability period of three years from the date of the completion of the project. The reasonableness of the bids received was verified on the basis of the competitive rates of work in ready mix concrete in the market, in the competitive bids and as available with MJP and revised estimates were accordingly prepared. In the affidavit in reply, it has been stated that the Seventh Respondent agreed to reduce the tender bid after discussion, thereby bringing the estimate of the work portion to Rs.29.85 crores which was 1.18% lower than the revised estimated cost.

4. We are of the view that in these facts and circumstances no case for interference under Article 226 of the Constitution is made out. The revision of the estimated cost has been satisfactorily explained. The tender process is not demonstrated to suffer from any arbitrariness as would warrant the interference of

the Court. The Petitioner has approached the Court belatedly when the work was substantially completed. The petition is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.